

**PART 194—CRITERIA FOR THE CERTIFICATION AND RE-CERTIFICATION OF THE
WASTE ISOLATION PILOT PLANT’S COMPLIANCE WITH THE 40 CFR PART 191
DISPOSAL REGULATIONS**

§ 194.2 Definitions.

Acceptable knowledge means any information about the process used to generate waste, material inputs to the process, and the time period during which the waste was generated, as well as data resulting from the analysis of waste, conducted prior to or separate from the waste certification process authorized by EPA’s Certification Decision, to show compliance with Condition 3 of the certification decision (Appendix A of this part).

Minor alternative provision means an alternative provision to the Compliance Criteria that clarifies a regulatory provision, or does not substantively alter the existing regulatory requirements.

§ 194.6 Alternative provisions.

The Administrator may, by rule pursuant to 5 U.S.C. 553, substitute for any of the provisions of this part alternative provisions ~~chosen after~~.

———(a) ~~The, or minor~~ alternative provisions, in accordance with the following procedures:

(a) Alternative provisions may be substituted after:

(1) ~~Alternative procedures~~ have been proposed for public comment in the Federal Register together with information describing how the alternative provisions comport with the disposal regulations, the reasons why the existing provisions of this part appear inappropriate, and the costs, risks and benefits of compliance in accordance with the alternative provisions;

(b2) A public comment period of at least 120 days has been completed and public hearings have been held in New Mexico;

(e3) The public comments received have been fully considered; and

———(d) (4) A notice of final rulemaking is published in the Federal Register.

(b) Minor alternative provisions may be substituted after:

(1) The minor alternative provisions have been proposed for public comment in the Federal Register together with information describing how the alternative minor revision or update comport with the disposal regulations, the reasons why the existing regulation of this part requires the minor revision or update, and the benefit of compliance in accordance with the alternative minor revision or update;

(2) A public comment period of at least 30 days have been completed for the minor revisions or updates and the public comments received have been fully considered;

(3) A notice of final rulemaking is published in the Federal Register for the minor revisions or updates.

§ 194.8 Approval Process for Waste Shipment from Waste Generator Sites for Disposal at the WIPP.

(b) Waste Characterization Programs at Transuranic Waste-Generator Sites. The Agency will ~~determine~~ establish compliance with Condition 3 of the ~~requirements for use of process knowledge and a system of controls at waste generator sites~~ ascertainment using the process set forth below:—

———(1) For each waste stream or group of waste streams at a site, the Department must: (i) ~~Provide information on how process knowledge will be used for.~~

(1) DOE will implement waste characterization ~~of the waste stream(s) proposed for disposal at the WIPP; and (ii) Implement a system of controls at the site, programs and processes in accordance with Sec. § 194.24(c)(4); to confirm that the total amount of each waste component that will be emplaced in the disposal system will not exceed the upper limiting value or fall below the lower limiting value described in the introductory text of paragraph (c) of Sec. § 194.24. The implementation of such a system of controls shall include a demonstration that the site has procedures in place for adding data~~ Waste characterization processes will include the collection and use of acceptable knowledge; destructive and/or nondestructive techniques for identifying and measuring waste components; and the validation, control, and transmittal to the WIPP Waste Information System ("WWIS"), ~~and that such information can be transmitted from that site to the WWIS database; and a demonstration that measurement techniques and control methods can be implemented~~ database of waste characterization data, in accordance with ~~Sec. 194.24(c)(4) for the waste stream(s) proposed for disposal at the WIPP. § 194.24(c)(4).~~

(2) The Agency will ~~conduct an audit or an inspection of a Department audit for the purpose of evaluating the use of process knowledge and the implementation of a system of controls for each waste stream or group of waste streams at a waste generator site. The Agency will announce a scheduled inspection or audit by the Agency with a notice in the Federal Register. In that or another notice, the Agency will also solicit public comment on~~ verify the compliance of waste characterization programs and processes identified in paragraph (b)(1) of this section using the process set forth below.

(i) DOE will notify EPA by letter that a transuranic waste site is prepared to ship waste to the WIPP and has established adequate waste characterization processes and programs. DOE also will provide the relevant waste characterization program plans and ~~Department~~ documentation;

~~which will be placed in the dockets described in Sec. 194.67. A public comment period of at least 30 days will be allowed.~~

~~_____ (3) The Agency's written decision regarding compliance with the requirements for. EPA may request additional information from DOE.~~

(ii) EPA will conduct a baseline inspection at the site to verify that adequate waste characterization ~~programs described~~ program plans and technical procedures have been established, and that those plans and procedures are effectively implemented. The inspection will include a demonstration or test by the site of the waste characterization processes identified in paragraph (b)(1) of this section ~~for one or more waste streams from a waste generator site will be conveyed in a letter from the Administrator's authorized representative to the Department. No such compliance determination shall be granted until after the end of the public comment period described in paragraph (b)(2) of this section. A copy of the Agency's compliance determination letter will be placed. If an inspection does not lead to approval, we will a send an inspection report to DOE identifying deficiencies and place the report in the public dockets in accordance with Sec. 194.67. The results of any inspections or audits conducted by the Agency to evaluate the plans described in paragraph (b)(1) of this section will also be placed in the dockets described in Sec. 194.67. (4) Subsequent to any positive determination of compliance docket described in § 194.67. More than one inspection may be necessary to resolve compliance issues.~~

(iii) The Agency will announce in the Federal Register a proposed Baseline Compliance Decision to accept the site's compliance with § 194.24(c)(4). In the notice, we will solicit public comment on the relevant inspection report(s) and any supporting materials, which will be placed in the public docket described in § 194.67. The proposal will describe any limitations on approved waste streams or waste characterization processes and identify tier assignments for the

site's reporting of changes to the approved waste characterization processes that we deem necessary in light of the site's demonstrated capabilities at the time of our inspection(s).

(iv) Our written decision regarding compliance with the requirements for waste characterization programs and processes described in paragraph (b)(1) of this section will be conveyed in a letter from the Administrator's authorized representative to DOE. EPA will not issue a compliance decision until after the end of the public comment period described in paragraph (b)(2)(iii) of this section. EPA's compliance decision will respond to significant and timely received comments. A copy of our compliance decision will be placed in the public docket described in § 194.67. DOE will comply with any reporting requirements identified in the compliance decision and the accompanying inspection report.

(3) Subsequent to any positive determination of compliance as described in paragraph (b)(32)(iv) of this section, the Agency intends to conduct inspections, in accordance with ~~Sees-~~ ~~194.21 and~~ § 194.24(h), to confirm the continued compliance of ~~the programs approved under paragraphs (b)(2) and (b)(3) of this section. The results of such inspections will be made~~ approved waste characterization programs and processes at transuranic waste sites. EPA will make the results of these inspections available to the public ~~throughin the Agency's public~~ dockets, ~~as~~ described in § 194.67.

(i) If the Agency determines, at a subsequent inspection of an approved transuranic waste site, that waste characterization programs or processes are not adequately established or implemented, then we may suspend shipments and disposal of affected and potentially affected waste streams, or take other action in accordance with §§ 194.4(b)(1) and (2), until we determine that the deficiencies have been adequately resolved.

(ii) [Reserved]

§ 194.12 Submission of compliance applications.

Unless otherwise specified by the Administrator or the Administrator's authorized representative, ~~305~~ copies of any compliance application(s), any accompanying materials, and any amendments thereto shall be submitted in a printed form to the ~~Administrator.~~

~~Administrator's authorized representative.~~ In addition, DOE shall submit 10 copies of the complete application in alternative format (e.g., compact disk) or other approved format, as specified by the Administrator's authorized representative.

§ 194.13 Submission of reference materials.

Information may be included by reference into compliance applications(s), provided that the references are clear ~~and~~ specific and that, unless, otherwise specified by the Administrator or the Administrator's authorized representative, ~~105~~ copies of ~~the~~ referenced information are submitted to the ~~Administrator~~ Administrator's authorized representative. Referenced materials ~~which~~ that are widely available in standard ~~textbook~~ text books or reference books need not ~~be~~ submitted. Whenever possible, DOE shall submit 10 copies of reference materials in alternative format (e.g., compact disk) or other approved format, as specified by the Administrator's authorized representative.

§ 194.24 Waste characterization.

(c)(3) Provide information ~~which~~ that demonstrates that the use of ~~process~~ acceptable knowledge to quantify components in waste for disposal conforms with the quality assurance

requirements ~~found in~~ § 194.22.